IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.74 OF 1995

Shri Yeshwant Satiago Viegas,
since deceased, through his
Legal Representatives:

1. Smt. Venu Viegas,
   widow of Yeshwant Viegas,
   major of age;

2. Shri John alias Janu
   Viegas;

3. Smt. Anita J. Viegas;

4. Smt. Sudha Eshwar Viegas;

5. Shri Harischandra Viegas;

6. Smt. Sonia H. Viegas;

7. Shri Narayan Viegas;

8. Smt. Sunita N. Viegas,

   Appellants No.2, 4, 6 and 8 are
   sons and 3, 5, 7, 9 are
   daughters-in-law of Yeshwant
   Viegas;
   r/o Rautalem Gin,
   Bambolim, Tiswadi, Goa;

9. Smt. Kamini K. Hadkonkar;

10. Shri Krishna M. Hadkonkar,

   both no.9 and 10 are
   residents of Bendh,
   St. Cruz,Tiswadi,Goa;

11. Smt. Rosa Dias,
   r/o Aivao,Dona Paula,
   Tiswadi, Goa;

12. Smt.Suman S. Madkaikar;

13. Shri Surya Madkaikar,
   both No.12 and 13 are
   residents of Divar,
   Piedade, Tiswadi,Goa;

14. Smt.Kushali N.Surliker;

15. Shri Namdev G. Surlikar,

both No.14 and 15 are residents of Deulwada,St.Cruz, Tiswadi, Goa;

Appellants no.10, 13 and 15 are sons-in-law and Nos.9, 11, 12 and 14 are daughters of Yeshwant Viegas ... APPELLANTS.

VERSUS

1. Smt. Maria Luiza Veronica Fernandes, H.No.816, No Bairo St. Agostino, St. Cruz, Tiswadi,Goa;

2. Shri Maximo Mergulhao, r/o St. Cruz, represented by his Attorney Shri Raghurai Tamba,Contractor, Altinho,Panaji,Goa ... RESPONDENTS.

Shri Guru Shirodkar, Advocate for the Appellants.

Shri R.G. Ramani, Advocate for the Respondent No.1.

Shri S.S. Usgaonkar, Advocate for the Respondent No.2, absent.

CORAM : V.C. DAGA,J.

DATED : JUNE 21, 2002.

ORAL JUDGMENT

Heard parties. Perused record.

2. The Appeal arises from the Award/Judgment dated 8th August,1995 passed in Land Acquisition Case No.96 of 1987 by the Additional District Judge, Panaji.

3. Government has acquired an area of property bearing Survey No.43/2 admeasuring 7288 square metres. The said Survey No. is situated in village Bambolim. Undisputedly, the land is owned by the Respondent No.1 herein. However, the present Appellant/Applicant No.2 before the Reference Court, claimed right of tenancy to the said Survey number and consequently, claimed share in the compensation. In view of the dispute regarding the apportionment of the compensation under Section 30 of the Land Acquisition Case, the Reference Court framed following two issues reading as under:-

1. Whether the applicant Maria proves that the suit plot bearing survey no.43/2 acquired by the Government is owned by her and is in her possession she being therefore exclusively entitled to the whole amount of compensation awarded by the Land Acquisition Officer ?

2. Whether the respondent Yeshwant Viegas proves that it is he who is tenant in exclusive possession of the plot bearing survey no.43/2 acquired by the Government he being therefore entitled to the entire amount of compensation awarded by the Land Acquisition Officer ?

4. The aforesaid issues would show that

one of the issues related to the claim of tenant set up by the original Applicant No.2 (Yeshwant)/Appellant herein and after hearing the parties, the Reference Court negatived the said issue and recorded a positive finding that the Applicant No.2 failed to establish his case of tenancy in respect of the suit property bearing Survey No.43/2.

5. Shri G. Shirodkar, learned Advocate appearing for the Appellants, while assailing the impugned Award/Judgment, submitted that the Reference Court had no jurisdiction to deal with and decide the issue of tenancy under Section 58 of the Goa Agricultural Tenancy Act since the jurisdiction to deal with the decide this question of tenancy was with the Mamlatdar under the provisions of the Act. Therefore, the Reference Court should have referred the said issue to the Mamlatdar in view of the specific bar under Section 58 of the Goa Agricultural Tenancy Act. According to the learned Counsel for the Appellants, the Reference Court could not have dealt with or decided the said issue of tenancy for want of jurisdiction. Consequently, the trial Court acted without jurisdiction and, therefore, the impugned Award is liable to be quashed and set aside.

6. Shri R.G. Ramani, learned Counsel appearing for the Respondent No.1, submitted that the issue no.2 was an incidental issue and it was open for the Civil Court to decide as to whether the possession of Applicant No.2 was exclusive in the capacity of the tenant. He, therefore, tried to contend that the issue of tenancy was not directly involved in this case, that is, now he tried to support the judgment of the trial Court and prayed for dismissal of the present Appeal.

7. Undisputedly, the Respondents herein had raised the issue of tenancy and specific finding is recorded by the Reference Court at the end of Para 18 of the judgment reading as under:-

> ".....Thus the applicant no.2 has failed to establish his case of tenancy in respect of the suit property bearing survey no.43/2."

8. Looking to the above categorical finding, the submission made by Mr. Ramani cannot be accepted.

9. It is needless to mention that the above issue of tenancy can only be decided by the Mamlatdar in terms of Section 7 of the Goa, Daman and Diu Agricultural Tenancy Act. Section 58 of the said Act clearly provides that "save as provided under this Act, no Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Mamlatdar." In view of the clear provision debarring the Civil Court from deciding the issue of tenancy and there being specific provision in the said Act empowering the Mamlatdar to decide the said question as to whether a person is tenant or not, ex facie, the Reference Court had no jurisdiction to deal with and decide the said question. It is thus clear that the Reference Court has acted without jurisdiction in deciding the said issue.

10. The Apex Court in the matter of **Inacio Martins v. Narayan Hari Naik and others (AIR 1993** SC 1756), has clearly held that whenever the issue of tenancy is raised by the party to the proceedings in the Civil Court, such an issue is necessary to be referred to the Mamlatdar who is competent to decide

such issue under the said Act. The Reference Court having failed to do so and having proceeded to decide the said issue by itself, has clearly acted in breach of the provisions of law, more particularly, Section 58 of the said Act, which clearly debars a civil court from dealing with or deciding the said question. In this view of the matter, the impugned Award cannot be sustained and is liable to be quashed and set aside.

11. The impugned Award/Judgment, for the above reasons, is quashed and set aside. The matter is remanded to the Reference Court with direction to refer the issue of tenancy raised by the present Appellant/original Applicant No.2 to the Mamlatdar of the concerned taluka restricting the said issue only to the land in question bearing Survey No.43/2 of village Bambolim and only after receiving necessary finding on the said issue from the concerned Mamlatdar, may proceed to decide the reference proceedings in accordance with law. The Mamlatdar including other Revenue Authorities, are expected to deal with and decided this question, if referred, as early as possible considering the fact that the reference proceedings were initiated in the year 1987.

12. In the result, the Appeal is allowed in terms of above Order with no order as to costs.

V.C. DAGA,J.

ac.